



James B. Steele appeals the trial court's denial of his motion to suppress evidence. Steele raises one issue, which we revise and restate as whether the trial court erred by denying his motion to suppress the results of his chemical breath test. We affirm.

The relevant facts follow. On the evening of April 22, 2007, Steele was in a car accident. Sullivan County Sheriff's Department Deputy William Miller, who was investigating the accident, called for another officer to handle the investigation because he and Steele were friends. Sullivan County Sheriff's Department Deputy Jerald Mize soon arrived at the accident scene and, after transporting Steele to the Sullivan County jail, administered a breath test using a certified BAC DataMaster instrument. The breath test indicated that Steele had a blood alcohol content of .22.

The State charged Steele with: (1) Count I, operating a vehicle with an alcohol concentration equivalent of .15 or more as a class A misdemeanor;<sup>1</sup> and (2) Count IA, an enhancement of Count I, operating a vehicle with an alcohol concentration equivalent of .15 or more as a class D felony for a previous operating while intoxicated conviction.<sup>2</sup> Steele filed a motion to suppress the results of his chemical breath test arguing that Deputy Mize did not comply with the regulations of the Indiana State Department of Toxicology in administering the test. After a hearing, the trial court issued an order denying the motion. Steele filed a motion to certify the trial court's order for

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<sup>1</sup> Ind. Code § 9-30-5-1 (2004).

<sup>2</sup> Ind. Code § 9-30-5-1, -3 (2004).

interlocutory appeal. The trial court certified the order, and we accepted jurisdiction pursuant to Ind. Appellate Rule 14(B).

The issue is whether the trial court erred by denying Steele's motion to suppress the results of his chemical breath test. Our review of the trial court's denial of the motion to suppress is similar to our review of other sufficiency matters. Edwards v. State, 759 N.E.2d 626, 630 (Ind. 2001). The record must disclose substantial evidence of probative value that supports the trial court's decision. Id. We do not reweigh the evidence and we consider conflicting evidence most favorably to the trial court's ruling. Id. Steele argues that Deputy Mize "could not have observed [him] for [twenty] minutes prior to administering the breath test" as required by regulation, and that, therefore, the State failed to meet its burden of establishing the foundation for admitting the test results. Appellant's Brief at 6.

Results of chemical breath tests are not admissible if the test operator, test equipment, chemicals used in the test, or techniques used in the test have not been approved in accordance with the rules adopted by the Department of Toxicology. Fields v. State, 807 N.E.2d 106, 109 (Ind. Ct. App. 2004) (citing Ind. Code § 9-30-6-5(d)), clarified on reh'g, 811 N.E.2d 978 (Ind. Ct. App. 2004), trans. denied. Because the State is the party offering the results of the breath test, it has the burden of establishing the foundation for admitting the results. Id. Therefore, the State must set forth the proper procedure for administering a chemical breath test and show that the operator followed that procedure. Id.

As promulgated by the Department of Toxicology, the procedure for administering a chemical breath test is codified at 260 Ind. Admin. Code 1.1-4-8, which provides in relevant part:

The person to be tested must:

- (A) have had nothing to eat or drink;
- (B) not have put any foreign substance into his or her mouth or respiratory tract; and
- (C) not smoke;

within twenty (20) minutes before the time a breath sample is taken.

260 Ind. Admin. Code 1.1-4-8.

In support of his argument, Steele notes that, according to the Sullivan County dispatcher's "call log," Deputy Mize arrived at the accident scene at 1:13 a.m. and completed his investigation at 1:32 a.m. Transcript at 9. Thus, according to Steele, the call log shows that Deputy Mize waited nineteen minutes, not twenty as required by 260 Ind. Admin. Code 1.1-4-8, before administering the breath test. Steele also notes that Deputy Mize listed his "start observation time" as "1:00" on the DataMaster Evidence Ticket but that Deputy Mize was later unable to recall "whether he got that time" from his watch, the clock in his car, or from the dispatcher. Id. at 12.

However, at the hearing on Steele's motion to suppress, the State presented evidence that the call log contains numerous errors. For example, it shows that Deputy Mize left the accident scene at 1:13 a.m. and then left the scene again at 1:18 a.m. Furthermore, Deputy Mize testified that there are "frequent disparages [sic]" between the

call log and “real time.” Id. at 13. Deputy Miller, as well, testified that there are often “discrepancies” between the call log and real time, stating that:

[Y]ou know, the officer may say that they are in route, but the dispatcher actually has to click a button and put ‘em in route on that computer before anything’s done. So, there could be some time difference between when the officer said it and when the dispatcher had actually put it on the computer.

Id. at 21. Finally, Deputy Mize testified that he waited twenty-five minutes before administering the breath test. He stated that he provided a “five minute margin of error” and that he “correlated the times” from when he first observed Steele with the time on the DataMaster ticket. Id. at 14, 17. Although the dispatcher’s call log conflicts with this testimony, the trial court found the testimony of the officers more credible, and we do not reweigh the evidence. See Edwards, 759 N.E.2d at 630.

Given the facts of the case, we conclude that there is substantial evidence of probative value supporting the trial court’s denial of Steele’s motion to suppress and, thus, that the trial court did not err in denying the motion. See, e.g., Fields, 807 N.E.2d at 111 (holding that the State satisfied its burden to show that defendant’s chemical breath test was properly administered).

For the foregoing reasons, we affirm the trial court’s denial of Steele’s motion to suppress.

Affirmed.

NAJAM, J. and DARDEN, J. concur